



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use (the 2-Month Notice)
- an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice)
- A monetary order for unpaid rent

The landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that he sent the Notice of Dispute Resolution Proceeding and evidence to the Tenant by registered mail on April 27, 2022. Proof of mailing was provided. The landlord also sent their amendment by registered mail on May 19, 2022. Pursuant to section 90 of the Act, I find these packages are deemed to be received by the Tenant 5 days after they were sent, on May 2, 2022, and May 24, 2022, respectively.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*, based off the Notice?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord stated that they issued the 2 Month Notice because they live upstairs and need the additional living space for their own use. The Landlord served the Tenant with the 2 Month Notice on February 10, 2022, by posting it to the door of the rental unit. Proof of service was provided.

The Notice indicated the following grounds for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
 - The Landlord or Landlord's spouse

The Landlord stated that monthly rent is set at \$900.00 and is due on the 15th of each month. The Landlord holds a security deposit in the amount of \$450.00. The Landlord explained that the effective date of the 2 Month Notice was April 14, 2022, and the Tenant received his last month's rent, free. However, he never moved out after that, and has not paid any rent since, despite the fact that he still resides in the rental unit. The Landlord stated that the Tenant now owes \$1,800.00 in rent for April and May rent.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 49(3) of the *Act* permits a landlord to end a tenancy for Landlord's Use. A tenant who receives a notice to end tenancy under this part of the *Act* has 15 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 49(9) of the *Act*.

In this case, the Landlord issued the Notice because they live upstairs, and need the extra space as an extension of their living space.

Pursuant to section 90 of the Act, I find the Tenant is deemed to have received the 2 Month Notice on February 13, 2022, 3 days after it was posted to his door.

The Tenant had 15 days after receipt of this 2 Month Notice, until February 28, 2022, to dispute it with our office. This was not done. Accordingly, pursuant to section 47(5) of the Act, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the 2 Month Notice.

Based on this, and the Landlord's testimony supporting why it was issued, I find the Landlord is entitled to an order of possession, which will be effective **two days after service** on the Tenant.

With respect to the amount of rent owed, I find there is sufficient evidence and testimony to show that the Tenant owes and has failed to pay \$1,800.00 in rent for April and May 2022. I award this amount in full.

Pursuant to section 72 of the Act, I award the recovery of the \$100.00 filing fee paid by the Landlord. In summary, I order that the Tenant pay \$1,900.00.

Having made these findings, it is not necessary to consider the merits of the 10 Day Notice issued by the Landlord.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,900.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 14, 2022